



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)
)
OSCAR PLEDGER,)
Complainant,)
)
and)
)CHARGE NO: 1999 CF 2608
)EEOC NO: 21B992020
)ALS NO: 11431
FORT DEARBORN COMPANY)
FLEXIBLE PACKAGING,)
Respondent.)

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's *Motion to Dismiss* filed January 13, 2004. Complainant was allowed until January 27, 2004 to file a response to Respondent's motion; Complainant has failed to do so. This matter is ready for decision.

FINDINGS OF FACT

1. Complainant filed Charge Number 1999CF2608 with the Illinois Department of Human Rights (Department) on February 5, 2000, alleging that Respondent discriminated against him on the basis of race in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*, (Act). Pursuant to that Charge, the Department filed a Complaint on behalf of the Complainant with the Illinois Human Rights Commission (Commission) on December 15, 2000.
2. On May 17, 2001, Complainant filed a *Motion to Stay Proceedings* pending the outcome of an analogous claim filed in Federal Court. The motion was granted on July 30, 2001.
3. On December 9, 2003, both Parties appeared through counsel. Respondent was ordered to file a motion to dismiss the Complaint no later than January 13, 2004; Complainant was ordered to file a response no later than January 27, 2004; and

Respondent was ordered to file a reply no later than February 11, 2004. The matter was set for status on a decision on the motion March 9, 2004.

4. Respondent filed a *Motion to Dismiss* January 13, 2004, along with exhibits.
5. Respondent's motion to dismiss alleges that: (1) an Order granting its *Motion for Summary Judgment* in the federal claim, *Pledger v. Fort Dearborn Company*, Case No. 01C4711, filed in the United States District Court, Northern District of Illinois, was entered September 15, 2003 by Judge Joan B. Gottschall; (2) the federal matter was based upon the same facts as those pending before this Commission; and (3) that no appeal has been filed, rendering the grant of summary decision final and binding.
6. Complainant has failed to file a response to Respondent's motion, although given time to do so.
7. On March 9, 2004, Respondent appeared through counsel; Complainant did not appear. I granted Respondent's motion.

DETERMINATION

Respondent's motion should be granted due to Complainant's failure to file a response to the pending motion or to otherwise indicate an intent to proceed with this matter.

CONCLUSIONS OF LAW

1. Complainant's absence of a response shall be deemed acquiescence to Respondent's motion.
2. The failure of Complainant to file a response to Respondent's motion or to otherwise indicate an intent to proceed with this case justifies the granting of Respondent's motion.

3. Complainant has unreasonably delayed these proceedings by failing to respond to the motion, failing to appear at the scheduled March 9, 2004 status, and failing to otherwise indicate an interest in pursuing this matter.

DISCUSSION

Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation for dismissal with prejudice where a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any Order entered, or otherwise engages in conduct which unreasonably delays or protracts the proceedings. Similarly, 775 ILCS 5/8A-102(l)(6) authorizes a recommended order of dismissal, with prejudice, or of default as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous Order of the Administrative Law Judge.

Respondent has filed a well-grounded motion attaching a copy of its *Defendant's Motion for Summary Judgment* filed in the federal court and date-stamped November 6, 2002 and a copy of the federal *Order* granting its motion dated September 15, 2003. The Commission record indicates that Complainant has failed to file a response to Respondent's motion to dismiss, as ordered and that Complainant failed to appear for the scheduled March 9, 2004 status. In *Jones and Burlington Northern Railroad*, 25 Ill.HRC Rep. 101 (1986), the Commission stated, "We will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." Such is the case here, where the motion appears valid on its face and Complainant has provided no reason why the motion should not be granted.

RECOMMENDATION

Accordingly, I make the following recommendation:

That Respondent's *Motion to Dismiss* be granted and that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: March 12, 2003

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

Pledger v. Fort Dearborn Flexible Packaging
Charge No 21B99202
ALS #11431
Recommended Order and Decision